

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office on June 1, 2006, the Examiner rejected claims 28-44. In response, Applicants have canceled claims 25-27, amended claims 28, 31-36, and 41-44, and has submitted new claims 45-46. Applicants also provide the following remarks.

Rejections under 35 U.S.C. §§ 101 & 112, Second Paragraph:

In the Office Action, the Examiner rejected claims 31-44 under 35 U.S.C. §§ 101 and 112, second paragraph, as being directed to neither a process nor a machine. The Examiner also rejected claim 32 under 35 U.S.C. § 112, second paragraph, as being unclear as to whether both “using a bio-metric input device” and “using a password” are required, or just one of the steps.

Applicants have amended independent claims 31 and 35 to more clearly point out that a method is being claimed. Applicants also hereby expressly state that a method is being claimed. As to claim 32, Applicants respectfully submit that the claim is clear as to what is required. As amended, the claim requires “at least one of:” and then lists “using a bio-metric input device to identify a user” and “using a password to identify the user.” This language clearly indicates that the claim requires either one or both of the listed methods to identify the user.

Therefore, Applicants respectfully request removal of all rejections under 35 U.S.C. §§ 101 and 112, second paragraph.

Rejections under 35 U.S.C. §§ 102(e) and 103(a):

In the Office Action, the Examiner rejected claims 28-44, as understood by the Examiner, under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,535,726 to Johnson

(hereinafter "Johnson") and alternatively under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of ABA's Bank Credit Card Business (hereinafter "ABA reference"). Applicants respectfully submit that the claim set as provided herein is not anticipated nor made obvious by the cited references.

Applicants do not contend that Johnson does not disclose a mere vendor device, a mere purchaser device, and an authorization processor. Rather, Applicants contend that Johnson does not disclose the structural features claimed in independent claim 28, as amended, and that Johnson does not disclose the method steps claimed in independent claims 31 and 35, each of which claims require much more than merely a vendor device, a purchaser device, and an authorization processor.

Claim 28 requires a vendor device utilizing a vendor device short range communications device and "a vendor sales microprocessor in the vendor short range communications device configured to: transmit information regarding inventory, pricing, vendor identification and a sale amount through the vendor short range communications device to the purchaser communications device; and receive an authorization approval or denial from the purchaser communications device through the vendor short range communications device." This is not taught by Johnson. Rather, Johnson specifically teaches a retail transaction system where the system uses a short range communications device to transfer information to the customer's cell phone but receives an authorization through the retail transaction system's own long range communication device ("through a separate cellular link"). (Col 2 lines 40-46) Thus, these structural features of claim 28 are not taught by Johnson.

In addition, claim 28 requires a purchaser communications device "utilizing an authorization microprocessor, a short range communications device, and a long range

communications device,” with the “authorization microprocessor configured to: use the purchaser communications device short range communications device to request information from the vendor device and to receive the information transmitted by the vendor short range communications device; generate a request for authorization of a purchase corresponding to the vendor identification and the sale amount; transmit the request to the authorization processor through the long range communications device; receive an authorization approval or denial from the authorization processor through the long range communications device; and retransmit the authorization approval or denial to the vendor device through the purchaser communications device short range communications device.” This microprocessor configuration of the purchaser device is not taught by Johnson. Specifically, Johnson teaches that the authorization is sent not through the purchaser device or customer’s cellular phone (and only then to the vendor device by the purchaser device), but that the authorization is sent directly to the retail transaction system by the systems’ own “separate cellular network.” (Col 2 lines 40-46, see also Col 3 lines 2-4: “The network communicates the authorization information back to the point-of-sale system,” Col 4 lines 45-51, Col 5 lines 5-7, Col 5 line 66-Col 6 line 2, for example.) Thus it is quite clear that Johnson does not teach a purchaser device with a microprocessor configured as claimed.

Applicants respectfully submit that the ABA reference also fails to teach the cited claim limitations. Applicants therefore respectfully submit that claim 28 is not anticipated or made obvious by the cited references. Claims 29-30 add additional limitations to otherwise allowable subject matter and are at least allowable for the same reasons. Applicants therefore respectfully request removal of the rejections of these claims under 35 U.S.C. §§ 102 and 103.

Turning now to claim 31, this method claim includes limitations not taught by either Johnson or the ABA reference. Specifically, claim 31 requires the steps of “receiving a response

at the purchaser device from the authorization processor, wherein the response is selected from the group of: a denial if the purchase is not authorized by the authorization processor; and an approval if the purchase is authorized by the authorization processor,” and “transmitting the approval from the purchaser device to the vendor device.” (Emphasis added.) Neither of these limitations is taught or suggested by Johnson or the ABA Article. As discussed above, Johnson repeatedly teaches that the authorization is transmitted directly from the authorization processor to the point-of-sale (vendor) device, not the purchaser device. Because the authorization is not transmitted to the purchaser device, there is no need for the purchaser device to transmit anything to the vendor device. The ABA Article has been relied upon merely for the authorization of credit card transactions, which does not teach the specific steps claimed by claim 31.

Claim 35 contains similar limitations to those contained in claim 31, and is allowable for at least the same reasons. Claims 32-34 and 36-44 depend from either claim 31 or claim 35 and are therefore similarly allowable. Applicants therefore respectfully request removal of all remaining rejections under 35 U.S.C. §§ 102 and 103.

Response to the Examiner's Additional Comments and Requests:

Applicants thank the Examiner for his extensive additional comments clarifying the Examiner's positions during the examination of the application. Applicants desire to respond to the Examiners comments and requests as they are best able and provide the following:

In response to numbered item 18 (pages 7-9 of paper number 20060528), Applicants accept the Examiner's current interpretation of the claims according to the broadest reasonable interpretation. However, Applicants also reserve the right to expressly limit the meaning of claim terms in a future response if Applicants feel that it is necessary for the allowability of the

application. The Examiner may be assured that Applicants will, at that time, make the desire to strictly define the claim terms used explicitly known.

In response to numbered item 22 (pages 22-23), Applicants respectfully submit that claims 31-44 have always been method claims, interpretation by the Examiner in the recent Office Action notwithstanding, and have amended the claims to more particularly make clear that method claims are intended. As such, the particular steps claimed do become important.

In response to numbered item 23 (pages 13-14), Applicants agree that claims 28-44 do not contain any product-by-process limitations.

In response to numbered item 24 (page 14), Applicants agree that 35 U.S.C. § 112, sixth paragraph should not be invoked by the claims. Applicants have amended the claims to remove the “step for” language. Applicants do not invoke section 112, sixth paragraph, by claims 31-44 as they are currently amended. Applicants reserve the right to invoke that section in future amendments by including “means for” or “step for” language.

Regarding numbered item 25 (pages 14-15), Applicants thank the Examiner for noting the presence of optional language in claims 31 and 35. Applicants have amended these claims so that the language is no longer optional with the following language: (claim 31): receiving a response at the purchaser device from the authorization processor, wherein the response is selected from the group of: a denial if the purchase is not authorized by the authorization processor; and an approval if the purchase is authorized by the authorization processor;” or (claim 35): “receiving a response at the purchaser device from the authorization processor, wherein the response is selected from the group of: a denial if said purchase is not authorized by the authorization processor; and an approval if the purchase is authorized by the authorization processor.” While these claims still use the word “if,” Applicants respectfully submit that the

language is no longer optional since the claim requires a response, and the “if” language merely allows the response to be either an approval or a denial. Applicants therefore respectfully request that the quoted language of the claims be given their proper status as narrowing the claims as the claims are further examined in light of the above amendments and arguments.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this 1st day of September, 2006.

Respectfully submitted,



Michael F. Krieger
Attorney for Applicants
Registration No.: 35,232

KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 321-4814
Facsimile: (801) 321-4893